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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,035	01/20/2004	Chin-Chih Hsieh	OP-092000395	7094
7590 Yi-Wen Tseng 4331 Stevens Battle Lane Fairfax, VA 22044			EXAMINER PRUCHNIC, STANLEY J	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,035

Applicant(s)

HSIEH, CHIN-CHIH

Examiner

Stanley J. Pruchnic, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 6 and 8 are objected to because of the following informalities:
  - a. In Claim 6, in Line 2, perhaps the word **--to--** should be inserted after the phrase **"is operative"**; and
  - b. In Claim 6, in Line 2, perhaps the phrase **--ear temperature from--** should be inserted after the word **"measure"**; and
  - c. In Claim 6, in Line 2, perhaps the phrase **--next generated--** should be inserted after the phrase **"in response to the"**; and, finally, (in the same claim)
  - d. In Claim 6, in Line 4, perhaps the phrase **--next generated--** should be inserted after the phrase **"in response to the"** in order to more clearly describe the invention.
  - e. In Claim 8, in Line 2, please insert the word **--an--** after the phrase **"for inputting"** in order to more clearly provide antecedent basis for the element.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4447884 A (Wada; Yoshihiro, hereinafter **WADA**).

**WADA** discloses a multiple measurement and memory electronic ear thermometer, as claimed by Applicant in Claims 1-6, comprising:

a keypad unit (Fig. 2) including an activation key 5 (Col. 3, Lines 59-68; Step n3, Fig. 5), wherein when the activation key is pressed, the keypad unit is operative to generate an input signal;

a microprocessor 11 (Fig. 3) in electric communication with the keypad unit, the microprocessor being operative to generate a first control signal in response to the input signal;

an ear temperature measuring unit 12, operative to measure ear temperature from a first user in response to the first control signal generated by the microprocessor and convert the ear temperature into an electric signal sent to the microprocessor to generate a second control signal;

a display unit 2 (Fig. 3; and regarding Claim 3, WADA discloses the display unit includes a liquid crystal display), operative to display the ear temperature in response to the second control signal,); and

a memory unit (Col. 3, Lines 15-19; Col. 4, Lines 9-11), being partitioned into a plurality of individual memory sectors (e.g., see the display registers of elements 20...28, 19 in Fig. 7), wherein a first memory sector is operative to save the ear temperature in response to the second control signal.

Regarding Claim 2: each of the memory sectors disclosed by WADA is in the form of a queue data structure (Col. 5, Lines 1-30).

Regarding Claim 4, the memory unit disclosed by WADA includes a random access memory (RAM; see Col. 3, Lines 59-66).

Regarding Claim 5: WADA discloses the ear temperature measuring unit is also operative to count time for ear temperature measurement (Col. 3, Lines 15-19; Fig. 5, steps n4, n10).

Regarding Claim 6: WADA discloses the ear temperature measuring unit is operative [to] measure a second temperature (and, although not disclosed as being used for multiple users, the apparatus of WADA is capable of measuring the temperature from another user) in response to the first control signal, and a second memory sector is operative to save the ear temperature measured from the second user in response to the second control signal.

With respect to the intended use of the apparatus, *i.e.*, to monitor ear temperature: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Furthermore, the intended use is recited in the preamble. The functional limitations recited in the preamble which have structural implications have been given patentable weight because, although it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. See *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In this instance, the description in the body of the claim draws life and meaning from the functional

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limitations in the preamble, but only to the extent that they are required: thus the thermometer must be able to measure the temperature of an ear.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over **WADA** in view of US 3940742 A (Hudspeth; Emmett L. *et al.*, hereinafter **HUDSPETH**).

**WADA**, to summarize, discloses all the limitations as claimed by Applicant in Claims 7 and 8, as described above in Paragraph 3 as applied to Claims 1-6, further including the keypad unit having keys for interfacing to the microprocessor.

**WADA** as described above, does not disclose the keypad unit further including a key for inputting a number of users as claimed by Applicant in Claim 7; and **WADA** as described above, does not disclose the keypad unit further including a key for inputting identification code for each user as claimed by Applicant in Claim 8.

**HUDSPETH** discloses a multiple measurement thermometer including memory and input keys (Fig. 1) for acquiring temperature data and inputting associated patient data for a number of users, including an identification code (Col. 5, Lines 1-19).

**HUDSPETH** further discloses that it is advantageous to enter data for each patient including an identification code in order to benefit from easily keeping the data associated with the correct patient.

**HUDSPETH** is evidence that ordinary workers in the field of clinical medicine would recognize the benefit of using additional keys for inputting data and identifying codes for each patient as taught by **HUDSPETH** for the temperature data acquisition and storage device of **WADA** in order to more easily keep the medical records associated with each patient associated with the correct patient.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute additional keys for inputting data and an identification code for each patient for the thermometer of **WADA** in order to more easily keep the medical records associated with each patient associated with the correct patient as taught by **HUDSPETH**.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in a form PTO-892 and not mentioned above disclose related temperature measurement devices and methods.

- US 6190329 B1 (Cheng; Chien-Chung) and US 6110124 A (Cheng; Chien-Chung) disclose related temperature sensing and data storage and interface devices.
- US 4790324 A (O'Hara; Gary J. et al.) discloses a thermometer capable of measuring ear temperature or other body surface temperatures.
- US 4121574 A (Lester; Robert W.) discloses apparatus for measuring temperatures, and storing them, for multiple patients.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stanley J. Pruchnic, Jr., whose telephone number is

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**(571) 272-2248.** The examiner can normally be reached on weekdays (Monday through Friday) from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. F. Gutierrez can be reached at **(571) 272-2245**.

The **Official FAX** number for Technology Center 2800 is **(703) 872-9306** for **all official communications**.

Any inquiry of a general nature or relating to the status of this application or proceeding may be directed to the official USPTO website at **<http://www.uspto.gov/>** or you may call the **USPTO Call Center** at **800-786-9199** or 703-308-4357. The Technology Center 2800 Customer Service FAX phone number is (703) 872-9317.

The cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov/)), from the Office of Public Records and from commercial sources.

Private PAIR provides external customers Internet-based access to patent application status and history information as well as the ability to view the scanned images of each customer's own application file folder(s).

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12/12/04